Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NO. 86-1812

In the Supreme Court of the
United States

October Term, 1986

JACK J. HRIBAR,

Petitioner,

vs.

TRW INC.

Respondent.

Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Sixth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Did the District Court abuse its discretion in dismissing Petitioner's action for failure to prosecute where Petitioner made no effort to move the case to trial and did not diligently pursue settlement discussions?

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I. STATEMENT OF THE CASE

The underlying facts are adequately set forth in the District Court's Memorandum and Opinion dismissing the case for failure to prosecute and the Sixth Circuit's decision affirming that judgment, both of which are attached to the Petition.

II. SUMMARY OF ARGUMENT

Respondent, TRW Inc.,[1] submits that the District Court did not abuse its discretion when it dismissed Petitioner's action, with prejudice, in accordance with Rule 41(b) of the Federal Rules of Civil Procedure for

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1. The parties before the District Court and the Court of Appeals were the Petitioner, Jack J. Hribar, and Respondent, TRW Inc. TRW Inc is an Ohio corporation. It has no parent companies. A list of its subsidiaries and affiliates, not wholly owned, is provided in the Appendix to this Brief.

failure to prosecute. The power to invoke that sanction is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the calendars of the district courts. As such, the Court acted within its authority when it dismissed the action.

In December, 1983, Petitioner advised the District Court that the case was near settlement, whereupon the Court dismissed the action, without prejudice. During the 20 months that followed, Petitioner failed to diligently pursue settlement discussions, nor did he make any effort to move the case to trial. Accordingly, the District Court acted properly when it dismissed the case.

In addition, a district court's consideration of lesser sanctions is fully comprehended by Rule 41(b). Requiring courts to make express

determinations that lesser sanctions are sufficient would be superfluous.

III. LEGAL ARGUMENT -- THE DISTRICT COURT PROPERLY EXERCISED ITS AUTHORITY UNDER FED. R. CIV. P. 41(b) TO DISMISS PETITIONER'S ACTION

This action was terminated pursuant to Federal Rule of Civil Procedure 41(b), which, as this Court made clear in Link v. Wabash Railroad Company, 370 U.S. 626, 633 (1962), vests a district court with wide discretion in deciding whether to dismiss for failure to prosecute. The Petition itself does not suggest any manifest abuse of discretion, and the procedural history below does not present a clear occasion for this Court to seek out and fashion new, particular standards in a judicial area not noted for conflicting appellate opinions or academic debate. Rule 41(b)

decisions, by their nature, are intensively fact-oriented, as is this one.

Batson v. Neal Spelce Associates, Inc., 765 F.2d 511 (5th Cir. 1985), relied upon by Petitioner, involves Rule 37 discovery sanctions, and is inapposite. Any suggestion that a district court, in deciding a Rule 41(b) motion, should automatically consider lesser sanctions is subsumed in the extant Rule 41(b) discretionary standard. Any more forceful expression of such a suggestion would invite this Court to redraft Rule 41(b).

Moreover, it is equally clear that the District Court did in fact consider imposing lessor sanctions, but determined that they would be futile. The Court determined that "Hribar's lengthy delays protracted TRW's defense of this case and presumably prejudiced its ability to defend itself in the

litigation which Hribar now wishes to embark upon." (Petition for Writ at 16a). Clearly, the Court recognized that any sanction short of dismissal would not remedy the prejudice suffered by TRW for the unreasonable delays in this action. Further proof of the Court's consideration of lesser sanctions is found in the following rationale:

> If the Court were to permit this case to continue, it would be faced with similar requests from a myriad of parties who would find reasons to reopen cases which have long been dormant.

(Petition for Writ at 16a-17a).

Petitioner also is contending that he is being denied his "day in court" when he makes the assertion that there are "no other remedies to right the wrong that has been perpetrated on him." (Petition for Writ at 10). Yet it was

his own inaction which was the basis for the dismissal -- he virtually abandoned this case on the eve of trial and did nothing to move it forward for nearly two years. Petitioner had his day in Court and did nothing with it.

IV. CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX

List Of Subsidiaries And Affiliates Of TRW Inc.

Companies of Record not Wholly-Owned as of June 4, 1987

Company Name

AAE-TRW Components SDN. BHD.
Applications Mecaniques et Robinetterie Industrielle S.A.
Bombas Pleuger Medina de Centroamerica S.A.
Componentes Venezolanos de Direccion, S.A.
Direcciones y Suspensiones Automotrices, S.A. de C.V.
EXEL Limited
Fuji-Serina Valve Co., Ltd.
Fuji Valve Co., Ltd.
German-Malaysian Precision Engineering SDN. BHD.
Hopewell International Insurance Ltd.
Industrias Medina, S.A. de C.V.
Inmobiliaria Industrial de Leon, S.A. de C.V.
Koa TRW Inc.
Maquiladora Industrial de Leon, S.A. de C.V.
Moresa, S.A.
Nippon Stud Welding Company, Limited
Norton/TRW Ceramics
Polimatic Eletrometalurgica Ltda.
Quality Safety Systems Company*

*a partnership, not a corporation

RDS Farm Electronics Ltd.
Reda Ras al Khaimah Ltd.
Shin Han Valve Industrial Company, Ltd.
Societe Immobiliere du Val de Bruche S.A.R.L.
Strain Measurement Devices Limited
Sybase, Inc.
Trenwick Group Inc.
TRW Calzoni S.p.A.
TRW do Brasil, S.A.
TRW Mission Hydrosystems S.A.
TRW Mission Japan Inc.
TRW Repa Espana S.A.
TRW-Repa Gesellschaft m.b.H.
TRW Repa GmbH
TRW Repa S.A.
TRW Sabelt S.p.A.
TRW Steering Co. Ltd.
TRW Technar Inc.
United Insurance Company
Universal Insurance Company of Ireland Limited
Wu Chou Valve Industrial Co., Ltd.
X.L. Insurance Company, Ltd.